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# In the Supreme Court
OF THE
# United States

OCTOBER TERM, 1956

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7121—125

Nos. ~~993-996~~

THE IVANHOE IRRIGATION DISTRICT,
vs. *Plaintiff and Appellant,*
ALL PARTIES AND PERSONS, etc.,
*Defendants,*
THE STATE OF CALIFORNIA,
*Defendant and Appellant,*
COURTNEY McCRACKEN,
*Defendant and Appellee.*

THE MADERA IRRIGATION DISTRICT,
vs. *Plaintiff and Appellant,*
ALL PERSONS, etc.,
*Defendants,*
THE STATE OF CALIFORNIA,
*Defendant and Appellant,*
CARL F. STEINER, et al.,
*Defendants and Appellees.*

PHILLIP and JANE E. ALBONICO,
vs. *Plaintiffs and Appellees,*
THE MADERA IRRIGATION DISTRICT,
*Defendant and Appellant,*

THE SANTA BARBARA COUNTY WATER AGENCY,
vs. *Plaintiff and Appellant,*
ALL PARTIES AND PERSONS, etc.,
*Defendants,*
MAURICE A. BALAAM, et al.,
*Defendants and Appellees.*

No. .....

No. .....

No. .....

No. .....

**On Appeal from the Supreme Court of California.**

## JURISDICTIONAL STATEMENT.

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**On Appeal from the Supreme Court of California.**

## JURISDICTIONAL STATEMENT.

### INTRODUCTION.

Appellants appeal from four companion decisions of th
California Supreme Court holding invalid certain contract

between public agencies of the State of California and between three of these agencies and the United States. This statement is submitted to show that the Supreme Court of the United States has jurisdiction of these appeals and that substantial questions are presented. Since the questions involved in these appeals are closely related, this single jurisdictional statement has been prepared to cover all four cases as authorized in Rule 15 (3) of the Rules of the Supreme Court of the United States.

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## OPINIONS BELOW.

The opinions of the California Supreme Court in these four cases are reported as follows:

*Ivanhoe Irr. Dist. v. All Parties*, 47 Advance Cal. 603, 306 P. 2d 824;

*Madera Irr. Dist. v. All Persons*, 47 Advance Cal. 685, 306 P. 2d 886;

*Albonico v. Madera Irr. Dist.*, 47 Advance Cal. 698, 306 P. 2d 894;

*Santa Barbara County Water Agency v. All Persons*, 47 Advance Cal. 701, 306 P. 2d 875.

For convenience these cases are hereinafter referred to as the *"Ivanhoe"*, *"Madera"*, *"Albonico"* and *"Santa Barbara"* cases respectively. In the first three cases the trial courts wrote opinions which have not been reported. The opinions and judgment in each case are included as appendices to this statement as follows:

*Ivanhoe Case*


| | |
|---|---|
| California Supreme Court opinion | Appendix A-1 |
| Trial court opinion | Appendix A-2 |
| Trial court judgment | Appendix A-3 |


*Madera Case*


| | |
|---|---|
| California Supreme Court opinion | Appendix B-1 |
| Trial court opinion | Appendix B-2 |
| Trial court judgment | Appendix B-3 |


*Albonico Case*


| | |
|---|---|
| California Supreme Court opinion | Appendix C-1 |
| Trial court opinion | Appendix C-2 |
| Trial court judgment | Appendix C-3 |


*Santa Barbara Case*


| | |
|---|---|
| California Supreme Court opinion | Appendix D-1 |
| Trial court judgment | Appendix D-2 |


All the appendices to this jurisdictional statement are printed in a separate volume filed herewith. The volume of appendices is paged separately from this volume of the text of the jurisdictional statement, and will be cited "Appendix p. ——."

## JURISDICTION.

The *Ivanhoe* case was brought by the Ivanhoe Irrigation District under California Water Code sections 23225 (Appendix J, Appendix p. 252) and 22670-22684 (Appendix M, Appendix pp. 258-260) to secure judicial validation of a contract with the United States providing for water service to the district from the Central Valley Project, a federal reclamation project in California, and for construction

of a distribution system within the district's boundaries. Such judicial validation is required by section 46 of the *Omnibus Adjustment Act of 1926* (44 Stat. 649 (1926), 43 U.S.C. § 423e (1952), Appendix F, Appendix p. 237). The decision of the Supreme Court of California was filed January 24, 1957; and rehearing was denied by that Court on February 19, 1957. Notice of appeal was filed on April 23, 1957.

The *Madera* case was brought by the Madera Irrigation District under the same statutory authorization as the *Ivanhoe* case to secure validation of a similar contract with the United States. The dates of the filing of the decision and the denial of rehearing by the California Supreme Court were the same as in the *Ivanhoe* case. Notice of appeal was filed on March 11, 1957.

The *Alborico* case was brought by a married couple owning land within the Madera Irrigation District for a writ of mandate under California Code of Civil Procedure section 1085 to compel exclusion of some of their land from the boundaries of the district. The dates of the filing of the decision and the denial of rehearing by the California Supreme Court were the same as in the *Ivanhoe* and *Madera* cases. Notice of appeal was filed on March 11, 1957.

The *Santa Barbara* case was brought by The Santa Barbara County Water Agency under section 11.10 of *The Santa Barbara County Water Agency Act* (Calif. Stats. 1945, c. 1501, pp. 2780, 2797, 1 Deering's Calif. Wat. Code, Ann., Act 7303, Appendix K, Appendix p. 254) to secure judicial validation of six contracts executed by the Agency. The first, the so-called "Master Contract", is between the United States and The Santa Barbara County Water

Agency and provides for water service to the Agency's member units from the Cachuma Project, a federal reclamation project in California. Each of the other five, the so-called "Member Unit Contracts", is between The Santa Barbara County Water Agency and other public bodies of the State of California and provides for delivery to those bodies of water received under the contract with the United States. The dates of the filing of the decision and the denial of rehearing by the California Supreme Court were the same as in the other three cases. Notice of appeal was filed on March 11, 1957.

The jurisdiction of the United States Supreme Court to review these four decisions by appeal is conferred by 28 U.S.C. section 1257 (1), and is sustained by the following decisions: *Wissner v. Wissner*, 338 U.S. 655, 656 (1950); *Flournoy v. Wiener*, 321 U.S. 253, 263 (1944).

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## STATUTES INVOLVED.

The statutes involved in these appeals are set forth as appendices to this statement as follows:

1. *Reclamation Act of 1902*, sections 5, 6, 8, 32 Stat. 388, 389, 390 (1902), 43 U.S.C. §§ 431, 498, 372, 383 (1952), Appendix E

2. Section 46 of the *Omnibus Adjustment Act of 1926*, 44 Stat. 649 (1926), 43 U.S.C. § 423e (1952). Appendix F

3. Section 2 of *Act of August 26, 1937*, 50 Stat. 850. Appendix G

4. Section 9 (c), (d), and (e) of the *Reclamation Project Act of 1939*, 53 Stat. 1194, 1195, 1196 (1939), 43 U.S.C. § 485h (c), (d), (e) 1952. Appendix H

5. Public Law No. 643, 84th Cong., 2d Sess., 70 Stat. 483 (1956), 43 U.S.C.A. § 485h—1 (1956 Supp.). Appendix I

6. *Irrigation District Federal Cooperation Law*, California Water Code Division 11, Part 6, Chapter 2, sections 23175-23197, 23200, 23225. Appendix J

7. *The Santa Barbara County Water Agency Act*, Calif. Stats. 1945, c. 1501, p. 2780, as amended by Calif. Stats. 1949, c. 12, p. 18, sections 6, 6.3, and 11.10, 1 Deering's California Water Code Ann. Act 7303. Appendix K

8. California Water Code section 22250. Appendix L

9. California Water Code sections 22670-22684. Appendix M

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## QUESTIONS PRESENTED.

Review of these decisions has been sought by way of appeal because the California Supreme Court has held, among other holdings, that certain federal statutes are unconstitutional.

The questions raised by these appeals which are common to all four cases are as follows:

1. Section 46 of the *Omnibus Adjustment Act of 1926* (Appendix F, Appendix pp. 237-238) precludes deliv-

ery of water from federal reclamation projects to land held in private ownership by any one owner in excess of 160 irrigable acres unless certain conditions are met.

(a) Does this section apply only to public lands of the United States or does it also apply to lands in private ownership?

(b) Is this section valid or does it deprive owners of more than 160 acres of land in federal reclamation projects in California of property without due process of law, and does it deny them equal protection of the laws?

(c) The California *Irrigation District Federal Cooperation Law* (Appendix J, Appendix, pp. 250-252 and *The Santa Barbara County Water Agency Act* (Appendix K, Appendix pp. 253-256) provide for the delivery and distribution of water acquired under any contract with the United States "under the relevant acts of Congress". (Calif. Wat. Code § 23197 (a), Appendix J, Appendix p. 251) and "in accordance with the applicable acts of Congress" (Calif. Wat. Code § 23200, Appendix J, Appendix p. 252; *The Santa Barbara County Water Agency Act*, § 6, see also § 6.3, Appendix K, Appendix pp. 253-254). Is this section 46 one of the "relevant" and "applicable" acts of Congress referred to in these California statutes?

(d) Does the application of this section 46 depend in any way on whether "the title to the water

to be purveyed is [or is] not an unlimited title in the United States" (Appendix A-1, Appendix p. 51).

(e) Does section 8 of the *Reclamation Act of 1902* (Appendix E, Appendix p. 236) require the United States to deliver water in accordance with a trust under state law, assuming such trust would prevent the imposition of the limitation in this section 46?

2. Does the validity of the contracts involve consideration of the water rights of anyone and particularly of the United States?

3. Is the United States a party to this proceeding?

4. If the United States is not a party, did the courts of California have jurisdiction to determine:

   a. What water rights or title the United States has acquired?

   b. What sort of water rights the United States could acquire in California, whether from the State of California or from others?

5. Can a trust imposed on water rights pursuant to State law prevent the United States from acquiring the water rights it needs to accomplish a federal purpose?

6. Are the rights of the beneficiaries under the trust declared to exist by the California Supreme Court property rights within the meaning of the due process clauses of the Fifth and Fourteenth Amendments to the United States Constitution?

7. Assuming the rights referred to in the preceding question are property rights within the meaning of the United States Constitution, does the 160 acre water limitation in section 46 of the *Omnibus Adjustment Act of 1926* (Appendix F, Appendix pp. 237-238) deprive the owners thereof of those rights?

Certain additional questions present in all the cases except the *Albonico* case are as follows:

8. Does federal law provide that upon repayment the districts contracting with the United States must be granted title to "works for the storage and distribution of water to and by the district" . . . "not dependent on a future and necessarily discretionary act of Congress" (Appendix A-1, Appendix p. 40)?

9. Does federal law require that the contracts with the United States specify an obligation for construction of storage and delivery works (other than local distribution systems for the use of individual districts) to be repaid in 40 years?

10. Does section 8 of the *Reclamation Act of 1902* (Appendix E, Appendix p. 236) submit the United States to the provisions of State law regulating public utilities where Congress by section 9 (e) of the *Reclamation Project Act of 1939* (Appendix H, Appendix p. 245) has provided a system of regulation for federal projects which may be inconsistent with the State system?

11. Section 9 (e) of the *Reclamation Project Act of 1939* (Appendix H, Appendix p. 245) authorizes the Secretary of the Interior to enter into contracts to furnish water for irrigation purposes from federal rec-

lamation projects. The term of such contracts is not to exceed forty years.

(a) Does this section authorize the United States at its discretion to discontinue water service at the end of the contract term?

(b) If it does, does it impose upon landowners a burden "under which they may suffer the loss of water rights at the discretion of the United States" so that it is "contrary to well established constitutional principles and protections". (Appendix A-1, Appendix p. 56)?

The remaining questions are present only in the *Santa Barbara* case, which alone involves contracts for the delivery of water for municipal water supply purposes. These questions are as follows:

12. Does section 8 of the *Reclamation Act of 1902* (Appendix E, Appendix p. 236) submit the United States to the provisions of State law regulating public utilities where Congress by section 9 (c) (2) of the *Reclamation Project Act of 1939* (Appendix H, Appendix p. 241) has provided a system of regulation for federal projects serving water for municipal water supply purposes which may be inconsistent with the State system?

13. Section 9 (c) (2) of the *Reclamation Project Act of 1939* (Appendix H, Appendix p. 241) authorizes the Secretary of the Interior to enter into contracts to furnish water for municipal water supply purposes from federal reclamation projects. The term of such contract is not to exceed forty years.

(a) Does this section authorize the United States at its discretion to discontinue water service at the end of the contract term?

(b) If it does, does it impose upon water users a burden "under which they may suffer the loss of water rights at the discretion of the United States" and is therefore "contrary to well established constitutional principles and protections" (Appendix A-1, Appendix p. 56)?

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## STATEMENT OF THE CASES.

### The Ivanhoe Case.

On September 23, 1949, the appellant Ivanhoe Irrigation District, a public agency of the State of California, entered into a contract with the United States *(Ivanhoe* Cl. Tr., p. 14 *et ff.)*.

Part A of the contract *(Ivanhoe* Cl. Tr., pp. 21-31) is a "9 (e) contract" based on section 9 (e) of the *Reclamation Project Act of 1939* (Appendix H, Appendix p. 245). It provides for delivery by the United States of an irrigation water supply to the district for a period of forty years at specified rates per acre foot payable annually in advance of delivery. This water supply comes from the Central Valley Project, a federal reclamation project located in the Sacramento and San Joaquin Valleys of California *(Act of August 26, 1937*, § 2, 50 Stat. 850, Appendix G, Appendix pp. 239-240). There are no public lands of the United States within the district or within the project service area. Part B of the contract *(Ivanhoe* Cl. Tr., pp. 31-39) is a "9 (d) contract" based on section 9 (d) of the *Recla-*

*mation Project Act of 1939* (Appendix H, Appendix pp. 243-245). It provides for expenditure by the United States of funds for construction of a system of works to distribute this water supply to the lands within the district and for repayment by the district, in forty equal annual installments without interest, of the amount spent.

Articles 34 through 36 of the contract (*Ivanhoe* Cl. Tr., pp. 43-48) contain the 160 acre water limitation on irrigation water delivery. Under these articles the district promises not to furnish water or service made available under the contract to more than 160 acres of irrigable land held by any one landowner in the district (320 acres for a husband and wife), unless the owner agrees to sell his "excess" land within 10 years at an appraised price which does not include any enhancement in value resulting from the existing or prospective possibility of securing project water or service. If the owner is willing to sell his excess land under these terms he may receive water delivered under the contract for all his land (Art. 36 (b) (i), *Ivanhoe* Cl. Tr., pp. 46-47). If he does not desire to sell his excess land he nevertheless may designate his non-excess land and be eligible for project water delivery to 160 or 320 acres, as the case may be (Art. 36 (b) (ii), *Ivanhoe* Cl. Tr., pp. 47-48). There is nothing in the contract prohibiting the owner from keeping his excess land and irrigating it with water pumped from the underground or acquired from any non-project surface supply.

Another article of the contract (Art. 33, *Ivanhoe* Cl. Tr., p. 43) provides that title to all of the project works, including the distribution system, shall remain in the United States until otherwise provided by Congress.

On October 31, 1949, the district brought this special proceeding in the Superior Court of the State of California in and for the County of Tulare to obtain a judicial determination of the validity of the contract. This is required by federal law (*Omnibus Adjustment Act of 1926*, § 46, Appendix F, Appendix p. 237) and article 42 of the contract (*Ivanhoe* Cl. Tr., p. 50), and is permitted by state law (Calif. Wat. Code § 23225, Appendix J, Appendix p. 252). The appellant State of California and the appellee Courtney McCracken, an owner of 309 acres of land in the district, separately demurred and then answered to the complaint, opposing validation of the contract on numerous grounds (*Ivanhoe* Cl. Tr., pp. 68-72, 100-143). The State of California later filed an amended answer asking for validation of the contract (*Ivanhoe* Cl. Tr., p. 155). Since then the State has supported the position of the district. The Water Project Authority of the State of California and the State Engineer of the State of California also appeared but took no position on the validity of the contract (*Ivanhoe* Cl. Tr., pp. 165, 192-203).[1]

On July 31, 1952, the Superior Court filed its opinion and order for findings (Appendix A-2, Appendix pp. 113-135). On February 27, 1953, the findings of fact and conclusions of law were signed (*Ivanhoe* Cl. Tr., pp. 237-315) and the judgment entered holding the contract invalid (Appendix A-3, Appendix pp. 136-138).

The district and the State of California appealed the case to the Supreme Court of the State of California

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[1]The Water Project Authority and the office of State Engineer have since been abolished (Calif. Stats. 1956, 1st Extra. Sess., c. 52, Calif. Wat. Code § 154).

(*Ivanhoe* Cl. Tr., pp. 322, 323). By a 4-3 decision, that Court on January 24, 1957, affirmed the Superior Court's judgment (Appendix A-1, Appendix pp. 1-64, 64-86, 86-112), and on February 19, 1957, denied rehearing.

**The Madera Case.**

On May 14, 1951, the appellant Madera Irrigation District, a public agency of the State of California, entered into a contract with the United States (*Madera* Cl. Tr., pp. 6-54). For purposes of this appeal, the contract is substantially identical to the contract in the *Ivanhoe* case. And, as in the *Ivanhoe* case, there are no public lands of the United States within the district.

On May 21, 1951, the district brought this proceeding for validation of the contract in the Superior Court of the State of California in and for Madera County under the same authority as the proceeding in the *Ivanhoe* case. Eighty-six owners of land in the district and four owners of land outside the district appeared in opposition to the contract by demurrer and then answer (*Madera* Cl. Tr., pp. 119, 155, 189, 237, 287, 335, 425). The State of California appeared and supported the validity of the contract (*Madera* Cl. Tr., pp. 79-118). As in the *Ivanhoe* case, the Water Project Authority of the State of California and the State Engineer of the State of California appeared but took no position on the contract's validity (*Madera* Cl. Tr., pp. 91, 378-394).

On August 20, 1952, the trial court filed its memorandum opinion directing the preparation of findings of fact and conclusions of law against the validity of the contract in accordance with the views expressed by the same judge in

the *Ivanhoe* trial court opinion (Appendix B-2, Appendix p. 156). The findings of fact and conclusions of law were filed on September 25, 1953 (*Madera* Cl. Tr., pp. 423-541), and judgment holding the contract invalid was entered on February 3, 1954 (Appendix B-3, Appendix pp. 157-179).

The district and the State of California appealed from the judgment of invalidity (*Madera* Supp. Cl. Tr., pp. 7, 11) while the State Engineer appealed from certain conclusions of law relating to the vesting of water rights (*Madera* Supp. Cl. Tr., pp. 1-3).

The Supreme Court of California, by a 4-3 decision filed January 24, 1957, modified and affirmed the judgment of invalidity "for reasons stated in the Ivanhoe case" (Appendix B-1, Appendix pp. 139-145) and on February 19, 1957, denied rehearing.

**The Albonico Case**

The appellees Phillip and Jane E. Albonico, on May 14, 1951, brought a petition for a writ of mandate in the Superior Court of the State of California in and for Madera County to compel the Board of Directors of the Madera Irrigation District to exclude from the district all their land in excess of 320 acres. Exclusion was sought on the ground that no benefit could be received by their land in excess of 320 acres because of the 160 acre water limitation provisions of the district's contract with the United States. This is the same contract in issue in the *Madera* case. The district board of directors had previously denied exclusion.

After rendering an opinion holding the 160 acre water limitation provisions of the contract unconstitutional as a

deprivation of property without due process of law and as a denial of equal protection of the laws (Appendix C-2, Appendix pp. 185-201); the trial court entered a judgment in the alternative (Appendix C-3, Appendix pp. 202-204). The first alternative was that if the district's plan of operation was to deliver water in compliance with the 160 acre water limitation provisions of the contract with the United States, a writ of mandate would issue compelling exclusion of the land. The second alternative was that if the district did not apply these water limitation provisions, the writ would be denied.

The district appealed from this judgment on March 26, 1952 (*Albonico* Cl. Tr., p. 37). The California Supreme Court on January 24, 1957, by a 4-3 decision, held the water limitation provisions inapplicable "in view of our decisions in *Ivanhoe* . . . and in *Madera* . . ." (Appendix C-1, Appendix pp. 180, 183). Accordingly, the first alternative of the trial court was stricken and the second affirmed under which the appellees were entitled to delivery of water for all their land (Appendix C-1, Appendix p. 183). Rehearing was denied on February 19, 1957.

**The Santa Barbara Case.**

On September 12, 1949, the appellant Santa Barbara County Water Agency, a public agency of the State of California, entered into a contract with the United States, commonly referred to as the "Master Contract" (*Santa Barbara* Cl. Tr., pp. 73-113). For purposes of this appeal, the contract is substantially identical to the Ivanhoe and Madera contracts with three exceptions. First, the water supply is to be delivered from the Cachuma Project, a federal reclamation project in Santa Barbara County, Cali-

fornia (H.R. Doc. No. 587, 80th Cong., 2d Sess. (1948)) rather than from the Central Valley Project. Second, the contract is for a water supply only and not for construction of a distribution system. Third, the contract provides for delivery of water for municipal water supply purposes, as authorized by section 9 (c) (2) of the *Reclamation Project Act of 1939* (Appendix H, Appendix p. 241), as well as for irrigation. As in the *Ivanhoe* and *Madera* cases, there is no public land of the United States within the area to be served with water.

Subsequently the Agency entered into five contracts, commonly called the "Member Unit Contracts," with five public bodies within its boundaries who actually deliver the water to the users. These bodies and the dates of execution of their contracts are: (1) City of Santa Barbara, November 29, 1949 (*Santa Barbara* Cl. Tr. pp. 129-175); (2) Carpinteria County Water District, December 7, 1949 (*Santa Barbara* Cl. Tr. pp. 221-271); (3) Goleta County Water District, December 1, 1949 (*Santa Barbara* Cl. Tr. pp. 319-368); (4) Summerland County Water District, December 8, 1949 (*Santa Barbara* Cl. Tr. pp. 507-558); and (5) Montecito County Water District, December 8, 1949 (*Santa Barbara* Cl. Tr. pp. 413-462). Each of these contracts contains the 160 acre water limitation as required by the Master Contract (*Santa Barbara* Cl. Tr. p. 109).

On February 8, 1950, this proceeding for judicial validation of all six contracts was brought by the Agency in the Superior Court of the State of California in and for Santa Barbara County. As in the *Ivanhoe* and *Madera* cases, this is required by section 46 of the *Omnibus Adjustment Act of 1926* (Appendix F, Appendix p. 237) and by the con-

tracts (*Santa Barbara* Cl. Tr. pp. 113, 174, 270, 367, 461, 557) and is permitted by state law (Calif. Stats. 1945, c. 1501, § 11.10, pp. 2780, 2797, Appendix K, Appendix pp. 254-256). Seven individuals appeared and opposed validation of the contracts in addition to challenging the legality of the formation of the agency. Their demurrers were overruled and ultimately the trial court held all six contracts valid (Appendix D-2, Appendix p. 226).

On appeal from this judgment by appellees, the California Supreme Court, in a decision filed on January 24, 1957, unanimously affirmed that portion of the trial court judgment upholding the legality of the formation of the Agency. But, by a 4-3 decision, the Court reversed the trial court and held the contracts invalid on the basis of the reasoning contained in the *Ivanhoe* and *Madera* decisions (Appendix D-1, Appendix p. 221). Rehearing was denied on February 19, 1957.

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**HOW THE FEDERAL QUESTIONS WERE PRESENTED.**

The federal questions presented by these appeals all arise from the decisions of the California Supreme Court sought to be reviewed. That is, it was on the basis of its consideration and disposition of these federal questions that the California Supreme Court held the contracts invalid. In such a situation, where the federal questions were actually considered and decided by the highest court of the state, references to whether, how and when they were raised in the trial court are not necessary for the purpose of establishing the jurisdiction of the United States Supreme Court (*Wilson* v. *Cook*, 327 U.S. 474, 480

(1946); *Charleston Federal Saving & Loan Assn.* v. *Alderson*, 324 U.S. 182, 185-186 (1945); *Whitfield* v. *Ohio*, 297 U.S. 431, 435-436 (1936)).

Therefore, in the text which follows we will merely point out where these questions were considered by the California Supreme Court and how they were decided by that Court. References to the raising of the questions on the trial court level will, however, be set forth in footnotes to the text discussion in the event that such references are of interest. Where the same point was raised more than once in the same case only one or two references will be given.

**A. Validity of the 160 Acre Water Limitation.**

The majority of the California Supreme Court concluded that the 160 acre water limitation provisions in all the contracts are invalid. These provisions are required in the contract by the plain words of federal law, section 46 of the *Omnibus Adjustment Act of 1926* (Appendix F, Appendix pp. 237-238) and are properly includible under state law (Calif. Wat. Code §§ 23197 (a), 23200, Appendix J, Appendix pp. 251, 252; Calif. Stats. 1945, c. 1501, §§ 6, 6.3, pp. 2780, 2787, 2788, Appendix K, Appendix p. 253). The majority reached this conclusion of invalidity by the following holdings:

1. Section 46 of the *Omnibus Adjustment Act of 1926* "may be deemed to apply to public lands alone" (Appendix A-1, Appendix p. 50) and not to delivery of water to privately owned land.[2] This is because the intention of the

[2]Not raised on the trial court level.

*Omnibus Adjustment Act of 1926,* as shown by another section of that act, was the development of public lands of the United States, and because the act is included in Title 43 of the United States Code which, according to a survey by the majority, deals generally with public lands (Appendix A-1, Appendix p. 50).

2. If section 46 were construed as being applicable to the delivery of water to privately owned land, it would be unconstitutional as a deprivation of property without due process of law and a denial of equal protection of the laws (Appendix A-1, Appendix pp. 29-30, 32, 45, 47-49; Appendix B-1, Appendix p. 145; Appendix C-1, Appendix p. 183).[3] This is because:

a) Under California law, all the "domestic" water in the state is held in trust by the state for the benefit of all the people of the state (Appendix A-1, Appendix pp. 30, 32).

b) The equitable title of the beneficiaries of this trust, who are all the people of the state, is "an inchoate right" to use the water "subject to like enforcement and equal protection of the law," although the right is dependent on compliance with "reasonable terms and conditions" (Appendix A-1, Appendix pp. 31, 32).

c) Although the United States did not appear in these cases (Appendix A-1, Appendix pp. 3-4), it is concluded that the United States has not acquired and cannot acquire rights in this water except as limited by these beneficial rights owned by all the people of the state (Appendix A-1, Appendix pp. 31-32, 35, 45, 51).

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[3] *Ivanhoe* Cl. Tr. p. 71, lines 12-18, p. 140, lines 18-22; *Madera* Cl. Tr. p. 130, lines 1-8, p. 139, lines 6-16; *Albonico* Cl. Tr. p. 29, line 25-p. 30, line 10; *Santa Barbara* Cl. Tr. p. 60, lines 1-8.

d). The 160 acre water limitation on delivery of water through federal reclamation project facilities limits an owner of excess land in the use and enjoyment of this beneficial right owned by him "on the sole basis of the amount of property he owns" (Appendix A-1, Appendix p. 48). Such a basis of distinction is arbitrary and unreasonable and therefore constitutes a deprivation of such owner's property without due process of law and a denial of equal protection of the laws (Appendix A-1, Appendix pp. 47-49; Appendix B-1, Appendix p. 145).

3. As a matter of interpretation of federal law, section 8 of the *Reclamation Act of 1902* (Appendix E, Appendix p. 236) prevails over section 46 of the *Omnibus Adjustment Act of 1926* (Appendix F, Appendix pp. 237-238). Under this section 8, the United States must deliver water from a federal reclamation project in California ratably to owners of land within an irrigation district on the basis of the assessed valuation of their land as provided in California Water Code section 22250 (Appendix L, Appendix p. 257), even though this would be contrary to the express language of section 46 of the *Omnibus Adjustment Act of 1926* (Appendix A-1, Appendix pp. 33-35, 49-51).[4] The California Supreme Court apparently relied on this reasoning in invalidating the limitation in the Santa Barbara contracts without mentioning that there is no equivalent of Water Code section 22250 in the law governing the Santa Barbara County Water Agency or its member units.

4. The United States could apply the 160 acre water limitation provisions of section 46 of the *Omnibus Adjust-*

[4] Appendix A-2, Appendix p. 120; *Ivanhoe* Cl. Tr. p. 309, lines 7-8; *Madera* Cl. Tr. p. 534, lines 3-6, p. 536, lines 3-7.

*ment Act of 1926* to privately owned land in California only if it could acquire an unlimited title in "domestic" water of the state, which it cannot do. (Appendix A-1, Appendix pp. 30-32, 35, 51-52).[5]

5. The 160 acre water limitation in section 46 of the *Omnibus Adjustment Act of 1926* is not "applicable" federal law within the meaning of California Water Code section 23200 (Appendix J, Appendix p. 252), which provides that under contracts such as those in question water "shall be distributed and apportioned by the district in accordance with the applicable acts of Congress, the rules and regulations of the Secretary of the Interior thereunder, and the provisions of the contract" (Appendix A-1, Appendix p. 51).[6]

**B. Validity of Provision Respecting Title to Works.**

The majority of the Court also held invalid as a matter of federal law the article found in each district's contract with the United States providing that title to all of the project works, including the distribution system, shall remain in the United States until otherwise provided by Congress (Appendix A-1, Appendix pp. 39-40). This was based on the belief that such a provision "is contrary to the debtor-creditor relationship existing between the United States and the district" and that the district is entitled, on final repayment, to a conveyance of "works for the storage and distribution of water to and by the district . . . not dependent on a future and necessarily discretion-

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[5]Appendix A-2, Appendix pp. 130-131; *Ivanhoe* Cl. Tr. p. 296, line 21-p. 297, line 11; *Madera* Cl. Tr. p. 519, line 5-p. 520, line 3.

[6]Not raised on the trial court level.

ary act of Congress" (Appendix A-1, Appendix pp. 39-40, 63-64).[7]

**C. Validity of the Provisions for Water Delivery and Payment.**

Finally, the majority concluded that the provisions of the contracts with the United States relating to delivery and payment for a water supply are illegal, although they are faithfully based on sections 9 (c) (2) and 9 (e) of the *Reclamation Project Act of 1939* (Appendix H, Appendix pp. 241, 245) and are authorized by state law (Calif. Wat. Code §§ 23195, 23196, Appendix J, Appendix p. 251; Calif. Stats. 1945, c. 1501, §§ 6, 6.3, pp. 2780, 2787, 2788, Appendix K, Appendix pp. 253-254). The Court did not discuss the legality of the municipal water supply provisions of the Santa Barbara contract, but inferentially its views on 9 (e) seem to apply equally to 9 (c) (2). This conclusion was predicated in the following holdings:

1. Applicable federal law requires that a water supply contract between the United States and an irrigation district specify a specific amount of money, to be repaid by the district in 40 years, as the district's obligation for repayment of the cost of construction of all storage and delivery works serving it, which these contracts do not do (Appendix A-1, Appendix pp. 38-39, 52; Appendix B-1, Appendix p. 145).[8]

2. The water delivery provisions of the contract, by implication or otherwise, purport to grant to the United States the right to distribute water to consumers at a price without compliance with the laws of California relating to the regulation and control of public utilities in the

[7]Not raised on the trial court level.

[8]*Ivanhoe* Cl. Tr. p. 137, lines 11-20.

distribution of the State's domestic water; this is in conflict with controlling federal law, section 8 of the *Reclamation Act of 1902* (Appendix E, Appendix p. 236), which requires the United States to comply with such laws of California (Appendix A-1, Appendix pp. 54-56, 59, 64; Appendix B-1, Appendix p. 145).[9]

3. To the extent that the water delivery provisions of the contract, by implication or otherwise, reserve to the United States the right at its discretion to discontinue water service at the end of the contract term, those provisions are "contrary to well established constitutional principles and protections" (Appendix A-1, Appendix pp. 56-64; Appendix B-1, Appendix p. 145).[10]

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## THE QUESTIONS ARE SUBSTANTIAL.

### A. Validity of the 160 Acre Water Limitation.

1. In invalidating the 160 acre water limitation provisions of the contracts in issue, the California Supreme Court has held unconstitutional a restriction on water delivery to privately owned land from federal reclamation projects which, in one form or another, has been a cornerstone of federal reclamation law since the original *Reclamation Act of 1902*. Section 5 of that Act (Appendix E, Appendix p. 235), provides in part that, "No right to the use of water for land in private ownership shall be sold for a tract exceeding 160 acres to any one landowner. . . ." The justification for such a restriction has always been that irrigation water deliveries through federal reclama-

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[9] *Ivanhoe* Cl. Tr. p. 310, lines 9-18.

[10] *Ivanhoe* Cl. Tr. p. 138, lines 2-5; *Ivanhoe* Cl. Tr. p. 311, lines 3-5; *Madera* Cl. Tr. p. 537, lines 11-26.

tion projects are subsidized by the people of the whole country because the irrigators pay back only a fraction of the cost of the facilities serving them, and the subsidy should be widely distributed instead of concentrated in the hands of a few large landowners (see Chief Justice Gibson's dissenting opinion in the *Ivanhoe* case, Appendix A-1, Appendix pp. 78-80).

Subsequent additions to the reclamation law changed the mechanics of this water limitation, but maintained the principle intact (*e.g.* 36 Stat. 925, 926 (1911), 43 U.S.C. §§ 523, 524 (1952); 37 Stat. 265, 266 (1912), 43 U.S.C. § 544 (1952); 38 Stat. 686, 689 (1914), 43 U.S.C. § 418 (1952)). Section 46 of the *Omnibus Adjustment Act of 1926* (Appendix F, Appendix pp. 237-238), on which the 160 acre water limitation provisions in these contracts are based, is the latest such restriction of general applicability. It or one of the earlier provisions controls irrigation water delivery to privately owned land from every reclamation project in the 17 western reclamation states, except those few projects which by statute have either been subjected to special limitations (*e.g.* San Luis Valley Project, Colorado, 66 Stat. 282 (1952)) or have been expressly exempted (*e.g.* Santa Maria Project, California, 68 Stat. 1190 (1954)).

In holding the 160 acre water limitation invalid, these decisions of the California Court therefore have a reverberating impact on the entire federal reclamation program (*e.g.* see letter from six California Congressmen to Attorney General of California, Appendix to Petition for Rehearing by State of California in the *Ivanhoe* case, p. 1). A judgment by the highest court of a state that a statute

of the United States is invalid is, of course, subject to the appeal jurisdiction of the United States Supreme Court (*Wissner* v. *Wissner*, 338 U.S. 655, 656 (1950); *Flournoy* v. *Wiener*, 321 U.S. 253, 263 (1944).

2. This issue of the constitutionality of the limitation is unavoidable despite the attempt of the California Supreme Court to construe section 46 as applying to public land alone (Appendix A-1, Appendix p. 50). A simple reading of the section demonstrates beyond the shadow of a doubt that it imposes the 160 acre limitation on water delivery to privately owned land. It plainly says that:

> "Such contract or contracts with irrigation districts hereinbefore referred to shall further provide that all irrigable land held in private ownership by any one owner in excess of one hundred and sixty irrigable acres shall be appraised in a manner to be prescribed by the Secretary of the Interior . . .; and that no such excess land so held shall receive water from any project or division if the owners thereof shall refuse to execute valid recordable contracts for the sale of such lands. . . ."

The correct interpretation of this federal statute is, of course a federal question (*California* v. *Deseret Water &c. Co.*, 243 U.S. 415, 417 (1917); *Stanley* v. *Schwalby*, 162 U.S. 255, 278-279 (1896); *Stanley* v. *Schwalby*, 147 U.S. 508, 519 (1893)).

3. There is a current conflict of decision as to the constitutionality of the 160 acre water limitation among the highest courts of three of the western states. The Supreme Court of the United States, however, has never considered the question.

The constitutionality of the limitation was upheld in the last appellate decision on the subject immediately preceding the cases now sought to be reviewed (*Middle Rio Grande W.U. Assn.* v. *Middle Rio Grande C.D.*, 57 N.M. 287, 302, 311, 258 P.2d. 391, 400, 406 (1953)). A few months prior to *Middle Rio Grande*, the Supreme Court of Wyoming, in a self-acknowledged dictum, said that it believed the limitation to be unconstitutional (*In re Owl Creek Irr. Dist.*, 71 Wyo. 30, 61 *et ff.*, 68, 253 P.2d. 867, 879 *et ff.*, 882 (1953)). The decisions now appealed appear to be the first cases actually holding the limitation unconstitutional.

4. Each specific federal question involved in the conclusion reached by the California Court that the limitation is unconstitutional is of obvious significance to the entire west.

Two of the holdings are that this restriction, imposed by federal law on the furnishing of water from storage and delivery works financed, constructed, owned and operated by the federal government, takes from owners of excess land without due process inchoate beneficial rights which all persons in the state share in the water of the state (Appendix A-1, Appendix pp. 44-45), and by so doing also denies them equal protection of the laws (Appendix A-1, Appendix pp. 31-32). These holdings affect every one of the seventeen western reclamation states.

All of these states subscribe to the principle relied on by the California Court that unused water within the borders of the state is available for appropriation and use by the people of the state. If this principle gives rise to a property right which is taken without due process by the operation of the 160 acre water limitation on federal recla-

mation project deliveries in California, the same result would seem to follow in every other western state.

Further, if the restrictions on delivery of water required by federal law deny equal protection of the laws in California, they deny equal protection in all of the other reclamation states regardless of what theories such states may follow as to property rights in water.

In *Middle Rio Grande W.U. Assn.* v. *Middle Rio Grande C.D.*, 57 N.M. 287, 311, 258 P. 2d. 391, 406 (1953) (*supra* par. 3), the court held compliance with the limitation a valid exercise of the state's police power. This reasoning was ignored in the cases now appealed, although in one of its own landmark decisions the California Supreme Court held that a vested property right in water is as much subject to restriction under the police power as any other property right (*Gin S. Chow* v. *City of Santa Barbara*, 217 Cal. 573, 700-703, 22 P. 2d. 5, 16-17 (1933)).

The cases now appealed also disregard the legal consequences of the facts that the United States owns the delivery works and is subsidizing a large portion of the costs of making the water available. If these facts had been considered in the light of the principles declared by this Court in *Wickard* v. *Fillburn*, 317 U.S. 111, 133 (1942), and *Steward Machine Co.* v. *Davis*, 301 U.S. 548, 584-585 (1937), it would be clear: (1) that the owners of excess land are merely seeking to get all the United States has to give without doing what the United States asks in return, and to deprive them of this hope of benefit does not violate due process or equal protection; and (2) that the effort here is to deny the state and the United States the power to condition equitably the receipt of governmental bounty.

Further, analysis of the rights under the "trust" declared by these decisions shows these rights to be so evanescent that it is doubtful if they are property at all within the meaning of the Constitution. The only affirmative incident of the "trust" seems to be that it precludes application of the limitation. Under these circumstances it is submitted that the characterization of the "trust" rights as property not only is not binding on this Court, but should be rejected (*United States* v. *Allegheny County*, 322 U.S. 174, 184 (1944)).

5. Another of the holdings of the California Court involved in the conclusion that the limitation is unconstitutional is that the United States lacks the power to acquire the kind of unlimited title in water rights in California which the Court believes must be owned to enable the United States to apply the limitation. This holding renders ineffective the direction of Congress in authorizing the Central Valley Project (*Act of August 26, 1937*, § 2, 50 Stat. 850 (1937), Appendix G, Appendix pp. 239-240):

1. "That except as herein otherwise specifically provided, the provisions of the reclamation law, as amended, shall govern . . . the construction, operation and maintenance of the [Central Valley Project]; and

2. "[That] the Secretary of the Interior . . . may acquire by proceedings in eminent domain, or otherwise, all lands, rights of way, water rights, and other property necessary for said purposes."

If correct, the holding would render equally ineffective the authority granted by Congress to secure needed property rights for other reclamation projects. The fact that the

California Court held that the water rights are held by the State in trust, rather than absolutely (Appendix A-1, Appendix pp. 30-31) is not a valid basis for limiting the power of the federal government to acquire such water rights (*United States* v. *Carmack*, 329 U.S. 230, 239 (1946)).

6. Similarly, the holding that the general language of section 8 of the *Reclamation Act of 1902* compels the United States to obey state law irrespective of later, more specific requirements of federal law (Appendix A-1, Appendix pp. 49-50), if correct, would subject the whole body of federal reclamation law enacted since 1902 to nullification by contrary state law. Not only is this holding unsupported by the decision of *United States* v. *Gerlach Live Stock Co.*, 339 U.S. 725 (1950), which was cited as authority by the California Court (Appendix A-1, Appendix p. 51), but it is directly contradicted by the interpretation of section 8 in *Nebraska* v. *Wyoming*, 325 U.S. 589, 615 (1945): "We do not suggest that where Congress has provided a system of regulation for federal projects it must give way before an inconsistent state system."

**B. Validity of the Provisions for Water Delivery and Payment.**

1. In both the Central Valley Project and the Cachuma Project the recovery of reimbursable construction costs of the project irrigation facilities (other than local distribution systems) has been predicated upon the use of water service contracts authorized by section 9 (e) of the *Reclamation Project Act of 1939* (Appendix H, Appendix p. 245). Recovery of the construction costs of the municipal water supply features of the Cachuma Project was antici-

pated under similar water service contracts authorized by section 9 (c) (2) of the same Act (Appendix H, Appendix p. 241). This is made clear in the official cost allocation reports for these two projects (H.R. Doc. No. 146, 80th Cong., 1st Sess. (1947), pp. 9-10, 20; H.R. Doc. No. 587, 80th Cong., 2nd Sess. (1948), p. 33). Under 9 (c) (2) and 9 (e) contracts, the maximum term for which is forty years, water is furnished at specified rates designed to include an appropriate share of the operation and maintenance cost of the project and of the project's fixed charges. However, project construction costs need not be returned by the water users within the forty year maximum contract period. This is made particularly clear as to 9 (e) in section 1 (2) of the 1956 act supplementing section 9 (e) (Appendix I, Appendix pp. 246-249). The water rates included in the contracts for these two projects are actually based on a recovery period greater than forty years.

Each of the three contracts with the United States in issue in these cases contains irrigation water delivery provisions in strict accordance with section 9 (e) and the Santa Barbara contract's municipal water supply provisions are based on section 9 (c) (2).

Although the majority opinion of the California Court on the legality of the 9 (e) contract is somewhat ambiguous, the Court apparently forbids the use of such contracts as being illegal under federal law.[11] Instead of such contracts, the Court seems to require contracts under which each contracting district agrees to pay a specific amount of

[11]Since the Court's views on the 9(e) contract are inferentially applicable to municipal water supply contracts under section 9(c)(2), the discussion hereinafter on 9(e) applies also to 9(c)(2) (see pp. 21-23 herein).

money within forty years as its obligation for repayment of its share of the cost of construction of all project facilities serving it (Appendix A-1, Appendix pp. 63-64). In other words, the Court has read out of the law section 9 (e) of the *Reclamation Project Act of 1939* and its recent supplement (Appendix I, Appendix pp. 246-249) in favor of the mandatory use of 9 (d) contracts (§ 9 (d) of the *Reclamation Project Act of 1939*, Appendix H, Appendix pp. 242-245).

Little argument is needed to show that the correctness of this ruling is a matter of major importance in every reclamation project where 9 (e) contracts have been used or are contemplated. In California alone as of 1955 twenty-seven 9 (e) contracts had been entered into; nine more were in force in five states in the Missouri River Basin (Sen. Rep. No. 2241, 84th Cong., 2d. Sess. (1956), pp. 2, 6). Moreover, all the contracting districts have a heavy financial stake in the legality of the 9 (e) contract, for if they must repay their share of project construction costs within forty years instead of the longer recovery period permitted under 9 (e), their annual cost of water may be significantly increased.

2. A further ground of invalidity of the 9 (e) contract relied on by the California Court is that it is violative of section 8 of the *Reclamation Act of 1902* (Appendix E, Appendix p. 236) because it fails to conform to the laws of California regulating public utility operation (Appendix A-1, Appendix pp. 55-56). Involved in this holding are three important questions of federal law: (1) Whether the United States, when acting under a 9 (e) contract, is operating as a public utility; (2) whether such operation is in

conflict with state law; and, (3) if so, whether section 8 of the *Reclamation Act of 1902* compels compliance with state law notwithstanding that section 9 (e) provides otherwise.

3. Finally, the California Court apparently believes that the validity of these contracts depends on whether water service will be continued at the expiration of the forty year term of their water delivery provisions (Appendix A-1, Appendix pp. 56, 64). If this belief is correct, it is important to the administration of the federal reclamation program that the question of the proper construction and constitutionality of the section 9 (e) and its 1956 supplement (Appendix I, Appendix pp. 246-249) with respect to continuance of water delivery after forty years be definitively answered by the United States Supreme Court.

**C. Validity of Provision Respecting Title to Works.**

The California Supreme Court held that upon repayment of its obligation each contracting district has the right to a conveyance from the United States of title to the storage and distribution works serving it "'not dependent on a future and necessarily discretionary act of Congress,'" and that the contracts are defective in stating that title to all project works shall remain in the United States until otherwise provided by Congress (Appendix A-1, Appendix pp. 39-40, 64). The effect of these conclusions is to deprive Congress of the exclusive control over federal property which decisions of the United States Supreme Court have uniformly held it possesses (*Alabama v. Texas*, 347 U.S. 272 (1954), and cases cited therein.) A holding of this kind that fails to cite any federal statute either ex-

pressing or implying such an obligation to convey, and that ignores the one relevant statute forbidding conveyance without Congressional consent *(Reclamation Act of 1902,* § 6, 32 Stat. 389 (1902), 43 U.S.C. § 498 (1952), Appendix E, Appendix p. 235), would seem to warrant United States Supreme Court review even if no other issue were involved in these cases.

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**THE DECISIONS ARE NOT BASED ON ANY ADEQUATE NON-FEDERAL GROUND.**

The California Supreme Court construed California law in the course of deciding these four cases. But it is plain from the Court's opinions that even the majority did not believe there to be any non-federal ground or grounds adequate to support the decisions without its rulings on the federal questions.

Much of the main opinion, in the *Ivanhoe* case, is devoted to a development of a trust theory regarding the ownership of the "domestic" water of California. The Court held that under California law every person within the state is a beneficiary of a trust in which the state as trustee owns all the domestic water of the state. But two further holdings were needed to reach the conclusion that the 160 acre water limitation provisions of the contract are invalid: (1) The holding that the limitation contained in federal law takes away without due process the interests of those beneficiaries who own more than 160 acres of land and therefore denies them equal protection of the

laws (Appendix A-1, Appendix p. 47). (2) The holding that the United States is inhibited by federal law from acquiring the kind of rights which would enable it to apply the limitation in California (Appendix A-1, Appendix pp. 33-35). Whether federal statute is unconstitutional is obviously a federal question (*Wissner* v. *Wissner*, 338 U.S. 655, 656 (1950)). And so is the question whether statutes of the United States authorize the Secretary of the Interior to acquire the property necessary to accomplish a federal purpose (*California* v. *Deseret Water &c. Co.*, 243 U.S. 415, 417 (1917); *Stanley* v. *Schwalby*, 162 U.S. 255, 278-279 (1896); *Stanley* v. *Schwalby*, 147 U.S. 508, 519 (1893)).

The Court held also that California Water Code section 22250 (Appendix L, Appendix p. 257) compels both the contracting districts and the United States to deliver water from federal reclamation projects to landowners in accordance with the assessed value of their land, a formula at variance with the 160 acre water limitation (Appendix A-1, Appendix pp. 46-47).[12] Obviously, it is a federal question whether the United States must comply with this provision of state law.

But, as to the duty of the districts, the Court later refers (Appendix A-1, Appendix p. 51) to another section of the California Water Code, section 23200 (Appendix J, Appendix p. 252), which applies specifically to

[12]The California Court apparently regarded this California Water Code section equally controlling in the *Santa Barbara* case as in the *Ivanhoe* and *Madera* cases, although the section relates to irrigation districts and no similar provision can be found in the law governing the Santa Barbara County Water Agency or its member units.

the apportionment by a district of water received under a contract with the United States. That section provides that water so received "shall be distributed and apportioned by the district in accordance with the applicable acts of Congress, the rules and regulations of the Secretary of the Interior thereunder, and the provisions of the contract." The reason given by the Court for deciding that this language does not authorize California districts to apply the limitation is that the section speaks of "applicable" federal law and in its view the 160 acre water limitation is inapplicable (Appendix A-1, Appendix pp. 50-51).

The California Court regards the limitation as not applicable federal law on the theory that the United States cannot secure the kind of unlimited title in water rights which the Court feels must be possessed to empower the government to apply the limitation, and hence the limitation unconstitutionally deprives owners of excess land of their beneficial rights in the domestic water of the State and improperly discriminates against them. Thus, we are referred back to the federal questions of the constitutionality of the federal statute containing the 160 acre water limitation and the power of the United States to acquire water rights. When interpretation of a state statute involves a question of federal law, such interpretation itself becomes a federal question (*Standard Oil Co.* v. *Johnson*, 316 U.S. 481, 483 (1942)).

California law regulating public utility operation was adverted to by the California Supreme Court in its discussion about the forty year water delivery provisions of the contracts with the United States. The Court stated that if, as to those provisions, the contracts were deemed to be

other than for the repayment of a specified sum in forty years, they would be violative of all the laws of California respecting the regulation and control of public utilities in the state (Appendix A-1, Appendix pp. 55-56, 58-59, 64; Appendix B-1, Appendix p. 145). The reason given by the Court for the relevancy of California public utility law was that section 8 of the *Reclamation Act of 1902*, in directing compliance with state law relating to water used in irrigation, "controls the operations of the Department of the Interior so far as federal law is concerned" and makes state law governing public utilities applicable to the United States (Appendix A-1, Appendix pp. 55-56). Thus, here too the basic question is a federal question. That question is, assuming that the kind of water delivery arrangements authorized by section 9 (e) of the *Reclamation Project Act of 1939* are contrary to state public utility law, whether as a matter of federal law section 9 (e) is superseded in favor of such state requirements. Of course, even the premise that section 9 (e) violates state public utility law is open to United States Supreme Court review because the validity of a federal statute is being denied. In this regard, note that the California Court has failed to cite the California laws governing public utilities which it had in mind or to explain in what way the water delivery provisions of the contract by-pass them.

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## CONCLUSION.

It is submitted that the decisions in these four cases by the California Supreme Court misinterpret, misapply, and erroneously invalidate key provisions of federal reclama-

tion law, and gravely affect the administration of the entire federal reclamation program. We believe that the federal questions presented by this appeal are substantial and that they are of public importance.

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Respectfully submitted,

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